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No. 07-1283

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

PAUL BROWN, WILLIAM FANALY, CHARLES THOMAS, GARY RIGGS, ROBERT ORLIKOWSKI, and SCOTT WAY,

Petitioners,

v.

CASSENS TRANSPORT CO. and CRAWFORD & COMPANY, foreign corporations, and DR. SAUL MARGULES,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether Petitioners' civil RICO claim based on alleged mail and wire fraud in the filing of notices by Respondents disputing Petitioners' entitlement to workers compensation benefits was properly dismissed where Petitioners failed to adequately plead that they relied upon the alleged fraud to their detriment so as to satisfy the requirement of 18 U.S.C. §1964(c) of injury "by reason of" the alleged fraud.

DISCLOSURE STATEMENT

Cassens Transport Company is wholly owned by Cassens Corporation. No publicly held company owns 10% or more of the stock of Cassens Transport Company or Cassens Corporation.

Crawford & Company has no parent entity and is publicly traded. No publicly held company owns 10% or more of the stock of Crawford & Company.

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INTRODUCTION

The Court has already considered and rejected another petition for writ of certiorari filed by counsel for Petitioners in this case which was based on facts and questions of law which are virtually identical to those presented here. The Respondents respectfully submit that the Court's rejection of the petition in that matter, *Yax v UPS*, 127 S. Ct. 2428 (2007), was well-founded and that even more compelling reasons exist to deny this Petition.

This matter involves Petitioners' allegation that the Respondents violated that Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961, *et seq.* (RICO) by contesting their claims for workers compensation benefits. Specifically, Petitioners assert that Cassens Transport Company, their employer, conspired with Crawford & Company, a third-party workers compensation administrator and Dr. Saul Margules, a physician who conducted independent medical examinations of Petitioners, to deny Petitioners' workers compensation claims, although the Respondents were allegedly aware of facts which would support those claims. Petitioners claim that they suffered damages under RICO based upon the suspension of their workers compensation benefits pending resolution of their workers compensation

claims by the Michigan Worker's Compensation Agency (WCA).[1]

Although Petitioners urge the Court to grant their Petition to address whether a RICO plaintiff asserting the predicate act of mail or wire fraud must plead justifiable reliance upon a misrepresentation by the defendant, this case, like *Anza v Ideal Steel Supply Corp.*, 547 U.S. 451 (2006), may be resolved without addressing that issue. Respondents' expression of their position that the Petitioners were not entitled to benefits through the filing of Notices of Dispute with the WCA was not the proximate cause of the suspension of the Petitioners' workers compensation benefits. By giving notice that they intended to dispute the Petitioners' workers compensation claims, the Respondents merely initiated the dispute resolution process administered by the WCA. A denial of benefits resulting from that process could occur for any number of reasons, including the failure of a claimant to satisfy any element of his or her claim or a failure to satisfy procedural requirements. A claimant may also voluntarily decide to redeem his or her claim for reasons wholly unrelated to the dispute. Thus, any proceedings which would follow if Petitioners' claims are permitted to proceed would likely be

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[1] The workers compensation claims of each of the Petitioners which were pending at the time their RICO Complaint was filed were either redeemed (settled) or resolved based upon a voluntary payment of benefits by Respondent Cassens or a determination that benefits were owed.

highly speculative. As the Petitioners either received their workers compensation benefits or voluntarily settled their claims, a civil RICO claim by Petitioners presents a substantial risk of duplicative recovery. Thus, regardless of whether justifiable reliance is required, the Petitioners could not satisfy the proximate cause requirement to maintain a civil RICO action under 18 U.S.C. §1964(c).

Further, this case provides a poor vehicle to address the question of whether reliance is a required element of a civil RICO claim predicated on mail or wire fraud, and if so, whether such reliance must be by the plaintiff. As recognized by the United States Court of Appeals for the Sixth Circuit in its Opinion below, the Petitioners failed to appeal the decision of the United States District Court for the Eastern District of Michigan denying their motion to amend their Complaint to allege third-party reliance by the WCA. Thus, the issue of whether reliance by one other than the Petitioners is sufficient to support a civil RICO mail or wire fraud claim was not preserved for consideration by the Sixth Circuit and thus is also beyond consideration by this Court in the context of the present Petition. Further, this Court has already agreed to consider another petition for writ of certiorari in Docket No. 07-210, *Bridge v Phoenix Bond & Indemnity*, which does not present the same impediment to full consideration of the reliance question.

STATUTES INVOLVED IN THE CASE

Federal

The Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1964(c)

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

COUNTERSTATEMENT OF THE CASE

I. STATUTORY AND FACTUAL BACKGROUND

In Michigan, the provision of workers compensation insurance, including the determination of compensability of an alleged work-related injury, is regulated by the Michigan Worker's Disability Compensation Act (WDCA), MCL §418.101, *et seq.* The Act permits an employer to provide workers compensation

coverage either by purchasing a policy of insurance or via self-insurance. MCL §418.121. Workers compensation benefits provided pursuant to such an insurance policy or self-insurance is the exclusive remedy against an employer for personal injury or occupational disease, except when the injury is the result of an intentional tort. MCL §418.131. The Act prohibits the employer from asserting certain defenses to liability, such as employee negligence or assumption of risk. MCL §418.141. Within two weeks of notice of a compensable injury, an employer is obligated to pay weekly workers compensation benefits to an employee who establishes such an injury. MCL §418.801(1).

An employer has the right under the WDCA to dispute the payment or continued payment of workers compensation benefits by filing a Notice of Dispute with the Workers Compensation Agency and serving a copy of the Notice upon the employee claiming benefits. MCL §§418.841(1), 418.847(1). The filing of a Notice of Dispute is by no means a final determination of an employee's entitlement to workers compensation benefits. Rather, the Notice of Dispute serves to initiate the administrative dispute resolution process under the WDCA. If his or her claim has been disputed, an employee has the right to a hearing before a WCA magistrate. MCL §§418.222, 418.851. The magistrate's decision may be reviewed by the Workers Compensation Appeal Board, and ultimately, the Michigan appellate courts. MCL §418.861.

Under the WDCA, an insurer's license to transact the business of workers compensation insurance within the state may be revoked if it repeatedly or unreasonably fails to promptly pay claims for compensation for which it is liable. Similarly, an employer who is a self-insurer may have its privilege of self-insurance revoked for engaging in such acts. MCL §418.631. Also, the WCA may dismiss a claim for review, assess costs or take other disciplinary action when it has determined that a claim or proceeding is vexatious because, among other reasons, it was taken without reasonable basis for belief that there was a meritorious issue on appeal. MCL §418.861b.

Petitioners are current or former employees of Respondent, Cassens Transport Company, who made claims for benefits under the Michigan Worker's Disability Compensation Act. Cassens Transport Company is an approved self-insurer in Michigan for workers compensation liability. Pursuant to a contract with Cassens Transport, Respondent, Crawford & Company acts as a workers compensation claim administrator for Cassens and adjusts workers compensation claims made by Cassens employees. Dr. Margules is the independent medical examiner who performed physical examinations of the Petitioners concerning their claims.

II. SUMMARY OF PROCEDURAL EVENTS

On June 21, 2004, Petitioners filed their Complaint which alleges, in essence, that Respondents

engaged in a pattern of racketeering activity which violated RICO by asserting their right under the WDCA to adjudicate the Petitioners' claims for workers compensation benefits. Specifically, the Complaint alleges that Cassens conspired with Crawford & Company and a physician, Respondent, Dr. Saul Margules, to deny Petitioners' workers compensation claims although Cassens, Crawford, and/or Dr. Margules were aware of facts which would support the validity of those claims. The Complaint further alleges that Cassens and Crawford selected unqualified doctors, such as Dr. Saul Margules, to obtain medical opinions which defendants could use to deny benefits to plaintiffs, " . . . rather than to get an objective opinion from a qualified specialist to help defendants decide whether plaintiffs were entitled to benefits." (App. 1, Complaint, ¶6.B.) Similar allegations are made throughout the Complaint. (App. 1, Complaint ¶¶11, 32, 37, 56, 68, and 69) Although Petitioners now assert that their Complaint alleged that the Respondents "targeted" Petitioners and that fraudulent Notices of Dispute were sent to the Workers Compensation Agency, neither allegation appears on the face of the Complaint. Rather, the Complaint merely alleges, in pertinent part, that the Respondents engaged in mail fraud by sending Notices of Dispute by U.S. Mail to the Petitioners. Petitioners assert that Respondents' alleged actions violated the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961, *et seq*. Petitioners further allege that the actions of Respondents intentionally inflicted emotional distress upon Petitioners.

In separate motions, Cassens and Crawford moved to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6). All Respondents joined in those motions. On July 15, 2005, the District Court entered its Opinion and Order granting these motions and dismissing the Complaint. (Pet. App. 34, *Brown v Cassens Transport Co.*, 409 F. Supp. 2d 793 (E.D. Mich, 2005)) The Court dismissed Petitioners' claims under the Racketeer Influenced and Corrupt Organizations Act (RICO) as they failed to state claims upon which relief could be granted. In pertinent part, the Court concluded that the Petitioners' injuries arose, not from their reliance upon the allegedly fraudulent communications, but rather, from the Respondents' dispute of Petitioners' workers compensation claims. 409 F. Supp. 2d 793, 807. The Court further held that dismissal of Petitioners' RICO claims was appropriate because the Worker's Disability Compensation Act reverse-preempted Petitioners' claims under the McCarran-Ferguson Act. The Court also dismissed the Petitioners' state law claims of intentional infliction of emotional distress for failure to state claims for which relief may be granted.

Also, on July 15, 2005, Petitioners filed their Motion for Leave to File Amendment to Complaint. This Motion was denied by the District Court on July 22, 2005 as the Court had issued its Opinion and Order Granting Defendants' Motions to Dismiss Plaintiffs' Complaint under Rule 12(b)(6) on the same date that the Motion for Leave to File Amendment to Complaint was filed. (Pet. App. 32, Opinion and

Order Denying Plaintiffs' Motion for Leave to File Amendment to Complaint) On July 28, 2005, Petitioners filed their Notice of Appeal to the United States Court of Appeals for the Sixth Circuit from the District Court's "Opinion and Order Granting Defendants' Motion to Dismiss Plaintiffs' Complaint Under Rule 12(b)(6) entered on July 15, 2005." (App. 36) Petitioners did not file a Notice of Appeal as to the District Court's July 22, 2005 Order Denying Plaintiffs' Motion for Leave to File Amendment to Complaint.

On July 10, 2007, a panel of the Sixth Circuit issued its Opinion affirming the District Court's dismissal of the Petitioners' RICO claims as they failed to plead detrimental reliance on Respondents' alleged misrepresentations concerning the cause of their injuries. (Pet. App. 9) Contrary to Petitioners' assertion, the Opinion, authored by the Hon. Julia Smith Gibbons, did not urge this Court to overturn the Sixth Circuit's uniform precedent established in numerous decisions, including *Bender v Southland Corp.*, 749 F.2d 1205 (6th Cir., 1984), nor did it state that the panel would overturn *Bender* and abandon the requirement that reliance upon a fraudulent representation be pled by a civil RICO plaintiff alleging mail fraud as a predicate act. Rather, the Opinion expressly rejected the Petitioners' argument that this Court's decisions in *Neder v United States*, 527 U.S. 1 (1999) and *Sedima, S.P.R.L. v Imrex Co.*, 473 U.S. 479 (1985) preclude the requirement that reliance be established to satisfy the standing

requirement of 18 U.S.C. §1964(c). Further, the Opinion concluded that the precedent of most other circuits required that reliance, either by the plaintiff or a third party, be pled to establish proximate causation when the predicate act is mail fraud. *Brown v Cassens Transport Co.*, 492 F.3d 640, 644-646 (6th Cir., 2007) En banc review of the Opinion was denied on December 20, 2007. (Pet. App. 3)

REASONS THE PETITION SHOULD BE DENIED

I. PETITIONERS CANNOT ESTABLISH PROXIMATE CAUSE, THUS THIS CASE MAY BE RESOLVED WITHOUT CONSIDERATION OF THE ROLE OF DETRIMENTAL RELIANCE IN A CIVIL RICO CLAIM BASED UPON MAIL FRAUD

The Racketeer Influenced and Corrupt Organizations Act authorizes civil suits against persons who participate in the conduct of an enterprise through a pattern of "racketeering activity". "Racketeering activity" is defined in 18 U.S.C. §1961 to include acts which are indictable under various provisions of Title 18 of the United States Code, including 18 U.S.C. §1341, prohibiting mail fraud and 18 U.S.C. §1343, prohibiting wire fraud. 18 U.S.C. §1964(c) permits "any person injured in his business or property by reason of" a violation of 18 U.S.C. §1962, which generally prohibits a conspiracy to conduct the affairs of an enterprise through a pattern of racketeering

activity, to bring suit and recover treble damages and attorneys fees based upon the claim.

This Court, in *Holmes v Securities Investor Protection Corp.*, 503 U.S. 268 (1992), held that a plaintiff may sue under 18 U.S.C. §1964(c) only if the alleged RICO violation was the proximate cause of the plaintiff's injury. Further guidance as to the proper interpretation of the "by reason of" provision of 18 U.S.C. §1964(c) was provided in *Anza v Ideal Steel Supply Corp.*, 547 U.S. 541, 126 S. Ct. 1991 (2006). In *Anza,* this Court considered the underlying premises of the proximate cause requirement and concluded, without addressing whether reliance is required to satisfy 18 U.S.C. §1964(c) when the predicate act is mail fraud, that Anza's conduct was not the direct cause of Ideal's injuries. In reaching this conclusion, the Court identified several guideposts to be used in an analysis of proximate cause under 18 U.S.C. §1964(c), including (1) whether the plaintiff's damages may have resulted from factors other than the defendant's alleged fraud; (2) whether the claim presents an appreciable risk of duplicative recoveries; (3) the degree to which the proceedings which would follow if the claim is permitted would be speculative; and (4) whether the immediate victim of the alleged RICO violation can be expected to vindicate the laws by pursuing its own claims. 126 S. Ct. 1991, 1997-1998.

Application of these guideposts to the Petitioners' claims makes clear that they cannot establish that the Respondents' allegedly fraudulent Notices of

Dispute proximately caused their claimed injuries. Initially, Petitioners claim that their injuries were caused by Respondents' allegedly fraudulent statements because they ceased receiving workers compensation benefits upon the filing of the Notices of Dispute. (Petition, pg. 5) Nonetheless, it is clear from the Complaint that the WCA did not immediately issue a determination denying any Petitioner benefits based upon receipt of the Notice, but rather, commenced the administrative fact-finding process to determine eligibility for benefits. In making such determinations, the WCA weighs evidence, including medical opinions, presented by each party in support of its position. The issuance of a Notice of Dispute in a workers' compensation matter by an employer, regardless of whether it may be fraudulent, is not a final disposition of a workers' compensation claim absent acquiescence by the claimant. Where the claimant does not acquiesce in (or rely upon) the Notice of Dispute, the claimant's entitlement to benefits is controlled by the relative weight of the evidence presented by the claimant and the employer to the WCA. A claimant who litigates his/her entitlement to benefits but who does not offer sufficient evidence to support that claim does not receive benefits regardless of the basis for the Notice of Dispute. Thus, the alleged inclusion of fraudulent statements in a Notice of Dispute could not have led directly to the suspension of the Petitioners' workers compensation benefits.

Second, permitting a RICO claim in this case presents an appreciable risk of duplicative recovery. Although the Complaint in this matter was filed during the pendency of their workers compensation claims before the WCA, some of the Petitioners were subsequently awarded benefits. Respondent Cassens agreed to voluntarily pay the benefits of others and some of the Petitioners' claims were settled. Under the WCA, an award of benefits is retroactive and includes an award of statutory attorneys fees. MCL §§418.858(2), 418.862. Thus, an award of treble damages and attorneys' fees to Petitioners under RICO could actually result in a quadruple recovery.

Third, the risk of speculative proceedings if Petitioners' claims were permitted to proceed is high. Particularly as to any Petitioner who chose to settle his claim, a trier of fact would be required to determine what the outcome would have been had the case been adjudicated, the Petitioner's reasons for settlement as well as to what extent, if any, a Petitioner's benefits might have been greater had the Respondents chosen to dispute their claims on grounds which were not arguably fraudulent. Such an analysis would require a complex evaluation of hypothetical presentations of evidence, procedural rulings and conclusions of law.

Also, the Worker's Compensation Disability Act provides the WCA, to which the Notices of Dispute were directed, with a state law mechanism to pursue appropriate remedies against an employer which unreasonably fails to promptly pay benefits or engages

in vexatious proceedings as described in MCL §§418.631 and 418.861b. Thus, as in *Anza*, the WCA, to which the Notices were directed, has the means to pursue its own remedies for allegedly fraudulent representations by an employer.

For the reasons set forth above, the *Anza* rationale makes clear that the Petitioners could not establish that the Respondents' alleged mail fraud was the proximate cause of any of their alleged injuries. Thus, it is not necessary for the Court to reach the question of whether detrimental reliance by the Petitioners should also be required in order to resolve their claims. Therefore, the Petition should be denied.

II. THE QUESTION OF WHETHER RELIANCE BY A THIRD PARTY IS SUFFICIENT TO SUPPORT A CIVIL RICO MAIL FRAUD CLAIM CANNOT BE CONSIDERED IN THE CONTEXT OF THIS PETITION SINCE PETITIONERS FAILED TO SO PLEAD, MAKING THIS A POOR VEHICLE TO ADDRESS THE PROPER ROLE OF RELIANCE IN THE WAKE OF *ANZA*

The only allegations of reliance made in Petitioners' Complaint pertain to the Petitioners and not to third parties, such as the WCA. (App. 1, Complaint, ¶¶6C., 17, 25, 38, 42, 50, 61, 70) In fact, the only allegations in the Complaint concerning the mailing of allegedly fraudulent Notices of Dispute describe only mailings to the Petitioners. (App. 1, Complaint, ¶¶9, 14, 23, 35, 48, 58, 69) Thus, the Complaint on its

face fails to plead the elements of third party reliance which Petitioners urge be adopted by this Court.

Although Petitioners have included in their Appendix their motion to amend their complaint to allege reliance by the WCA, this motion was denied by the District Court. (Pet. App. 32, Order Denying Motion for Leave to File Amendment to Complaint) The Petitioners did not file a Notice of Appeal as to this Order, and thus, failed to properly preserve the District Court's denial of their motion for review. (Pet. App. 9, *Brown v Cassens Transport Co.*, 492 F.3d 640, 645 at fn. 2 (6th Cir., 2007)) Thus, the question of whether reliance by a third party is sufficient to satisfy the requirements of 18 U.S.C. §1964(c) in the context of a civil RICO claim in which the predicate act is mail or wire fraud is not properly presented by this case. Denial of the Petition for this reason is also warranted.

III. THERE IS NO BASIS TO REVERSE THE DECISION BELOW AS THE SIXTH CIRCUIT CORRECTLY REQUIRED THAT THE PETITIONERS PLEAD DETRIMENTAL RELIANCE UPON A FRAUDULENT REPRESENTATION BY RESPONDENTS

A. Sixth Circuit Precedent Requiring Reliance by a Civil RICO Plaintiff Alleging Mail Fraud is Consistent With This Court's Jurisprudence

Petitioners argue that the Opinion of the Sixth Circuit in this case and the Sixth Circuit's prior decisions cited therein conflict with certain decisions of this Court. Initially, Petitioners cite *Neder v U.S.*, 527 U.S. 1 (1999) for the proposition that a civil RICO plaintiff claiming mail or wire fraud as a predicate act should merely be required to plead a fraudulent scheme using the mail or wires and not be required to plead reliance. *Neder* addresses the proofs required for violation of the federal mail fraud statute in a criminal case. It does not address the "by reason of" requirement of 18 U.S.C. §1964(c) applicable to civil RICO actions. Further, *Anza v Ideal Steel Supply Corp.*, 126 S. Ct. 1991, 1995-1996 (2006) underscores this Court's rejection of the argument that merely pleading a "scheme to defraud" relieves a civil RICO plaintiff of the requirement to establish proximate cause to satisfy 18 U.S.C. §1964(c).

Petitioners also rely upon footnote 19 in *Holmes v Securities Investor Protection Corp.*, 503 U.S. 258 (1992) to argue that this Court has rejected a reliance

requirement because the footnote cited two cases which "approved RICO mail fraud complaints which did not allege common law fraud". Nonetheless, the referenced decisions, *Taffet v Southern Co.*, 930 F.2d 847 (11th Cir., 1991) and *County of Suffolk v Long Island Lighting Co.*, 907 F.2d 1295 (2d Cir., 1990) reflect that third party reliance was present in *Taffet* and reliance was expressly required to satisfy 18 U.S.C. §1964(c) in *County of Suffolk*. Further, Petitioners' argument in this regard is not supported by the balance of the *Holmes* decision. Neither the language of *Holmes* nor the cited footnote demonstrates that the Opinion of the Sixth Circuit in this case conflicts with the precedent of this Court.

Petitioners also urge the adoption of their position based upon a statement in *Sedima, S.P.R.L. v Imrex Co.*, 473 U.S. 479 (1985) encouraging a liberal construction of RICO. Nonetheless, such a broad statement can hardly be read as an instruction to abandon the standing requirement for civil RICO claims. It is clear that *Sedima* intended to preserve RICO's standing requirement for civil claims. *Sedima, S.P.R.L., supra* at 495.

Both *Holmes* and *Anza v Ideal Steel Supply Corp.*, 126 S. Ct. 1991 (2006) make clear that this Court requires that a civil RICO plaintiff demonstrate standing as required by 18 U.S.C. §1964(c) by pleading and proving that the predicate act proximately caused his/her injuries. *Holmes v Securities Investor Protection Corp.*, 503 U.S. 258, 265-267 (1992); *Anza* at 1998. Further, this Court has applied

common law principles of causation in interpreting RICO and other federal statutes. See *Beck v Prupis*, 529 U.S. 494 (2000) [applying common law of civil conspiracy in interpreting meaning of injury "by reason of" a conspiracy in civil RICO suit]; *Field v Mans*, 516 U.S. 59 (1995) [applying the Restatement (Second) of Torts in interpreting Bankruptcy Code exception to discharge of debts due to false representation or fraud as requiring reliance upon false representation]. This Court's recent decision in *Stoneridge Investment Partners, LLC v Scientific-Atlanta, Inc.*, 128 S. Ct. 761 (2008) recognized the importance of reliance in establishing causation in the context of a private action based upon a fraudulent misrepresentation under §10b of the Securities Exchange Act. In that case, this Court observed:

> "Reliance by the plaintiff upon the defendant's deceptive acts is an essential element of the §10b private cause of action. It ensures that, for liability to arise, the 'requisite causal connection between a defendant's misrepresentation and a plaintiff's injury' exists as a predicate for liability. *Basic, Inc. v Levinson*, 485 U.S. 224, 243, 108 S.Ct. 978, 99 L.Ed. 2d 194 (1988); see also *Affiliated Ute Citizens of Utah v United States*, 406 U.S. 128, 154, 92 S.Ct. 1456, 31 L.Ed. 2d 741 (1972) (requiring "causation in fact")."

128 S. Ct. 761 at 769.

The recognized common law of causation in the context of a claim based upon fraudulent misrepresentation is set forth in Section 525 of the Restatement (Second) of Torts (1977). This Section provides that, to establish liability based upon a fraudulent misrepresentation, the plaintiff must demonstrate " . . . pecuniary loss caused to him by his justifiable reliance upon the misrepresentation." For the reasons set forth above, Respondents urge that the Sixth Circuit's requirement that a plaintiff demonstrate reliance on the defendant's misrepresentation to satisfy the "by reason of" requirement of 18 U.S.C. §1964(c) is supported by the holdings of this Court.

B. The Persuasive Authority of Most Circuits Supports the Requirement of Justifiable Reliance Upon a Fraudulent Misrepresentation Made by the Defendant to Establish Standing in a Civil RICO Claim in Which Mail or Wire Fraud is the Predicate Act

Contrary to Petitioners' assertions, other Courts of Appeals have consistently held that reliance upon a fraudulent misrepresentation made by the defendant must be pled in order to satisfy 18 U.S.C. §1964(c). *Bank of China, New York Branch v N.B.M., L.L.C.*, 359 F.3d 171 (2d Cir., 2004), *cert. granted in part*, 545 U.S. 1138 (2005), *cert. dismissed*, 126 S. Ct. 675 (2005); *Sikes v Teledyne, Inc.*, 281 F.3d 1350 (11th Cir., 2002), *cert. den.*, 537 U.S. 884 (2002); *Appletree Square I Limited v W.R. Grace & Co.*, 29 F.3d 1283

(8th Cir., 1994). Petitioners assert, based upon *Abels v Farmers Commodities Corp.*, 259 F.3d 910 (8th Cir., 2001), that the Eighth Circuit does not require a civil RICO plaintiff alleging mail or wire fraud to plead any misrepresentation by the defendant. Nonetheless, a close reading of the portion of *Abels* cited by Petitioners reveals that it does not discuss the elements necessary to establish standing under 18 U.S.C. §1964(c), but rather, the elements necessary to establish a "pattern of racketeering activity" under 18 U.S.C. §1962(c). Similarly, *Tabas v Tabas*, 47 F.3d 1280, 1294 (3d Cir., 1995), cited in support of Petitioners' argument that the Third Circuit does not require reliance to establish standing under 18 U.S.C. §1964(c), addresses instead the elements of mail fraud.

Petitioners also argue that *Schreiber Distributing v Serv-Well Furniture Co.*, 806 F.2d 1393 (9th Cir., 1986) holds that a civil RICO suit based upon mail fraud does not require reliance upon a misrepresentation by the defendant. *Schreiber Distributing*, which was decided prior to *Holmes v Securities Investor Protection Corp.*, 503 U.S. 258 (1992), fails to address the "by reason of" requirement of 18 U.S.C. §1964(c). In *Poulos v Caesars World, Inc.*, 379 F.3d 654 at 666 (9th Cir., 2004), the Ninth Circuit, citing *Holmes* and acknowledging the views of other circuits, expressly declined to address the question of whether reliance was always required to establish causation in a civil RICO case based upon mail or wire fraud. Thus, contrary to Petitioners' argument, the Ninth Circuit

has expressly declined to address whether reliance must always be pled to establish standing under 18 U.S.C. §1964(c), the Eighth Circuit has expressly recognized the reliance requirement for this purpose and the Third Circuit has not addressed the issue.

Petitioners also argue that their Petition should be granted based upon decisions of the First, Fourth and Fifth Circuits holding that a civil RICO plaintiff relying upon the predicate acts of mail or wire fraud may satisfy the standing requirement of 18 U.S.C. §1964(c) by pleading reliance by a third person upon a fraudulent misrepresentation by the defendant. Initially, as discussed in detail above and as noted in the Sixth Circuit's Opinion in this case at 492 F.3d 640, 645 at fn. 2 (6th Cir., 2007), Petitioners' Complaint does not allege reliance by a third party upon fraudulent misrepresentations by Respondents. Thus, this case does not present the question of whether reliance by a third party upon a fraudulent misrepresentation is sufficient to establish standing under 18 U.S.C. §1964(c) and that issue would not properly be before the Court if the Petition is granted.

Also, Petitioners do not correctly characterize the positions articulated by the Fourth and Fifth Circuits concerning the reliance requirement. Subsequent to its decision in *Mid Atlantic Telecom, Inc. v Long Distance Services, Inc.*, 18 F.3d 260 (4th Cir., 1994), the Fourth Circuit held in *Chisholm v Tran-South Financial Corp.*, 95 F.3d 331 (4th Cir., 1996) and *American Chiropractic Assn., Inc. v Trigon Healthcare, Inc.*, 367 F.3d 212 (4th Cir., 2004), *cert.*

den., 543 U.S. 979 (2004), that, to establish proximate cause, a civil RICO plaintiff alleging mail or wire fraud as a predicate act must have justifiably relied upon the defendant's material misrepresentation. Similarly, the scope of the Fifth Circuit's decision in *Procter & Gamble Co. v Amway Co.*, 242 F.3d 539 (5th Cir., 2001) was substantially limited by that court's decision in *Sandwich Chef of Texas, Inc. v Reliance National Indemnity Insurance Co.*, 319 F.3d 205 (5th Cir., 2003), *cert. den.*, 540 U.S. 819 (2003). *Sandwich Chef of Texas, Inc.* reaffirmed the general rule in the Fifth Circuit that proximate cause in a civil RICO action based upon fraud requires that a misrepresentation by the defendant be relied upon by the plaintiff. 319 F.3d 205 at 219. Finally, although the First Circuit, in *Systems Management, Inc. v Louiselle*, 303 F.3d 100 (1st Cir., 2002) does hold that mailed misrepresentations to a third person could be the basis for mail fraud, that decision does not address the "by reason of" provisions of 18 U.S.C. §1964(c).

Contrary to Petitioners' assertion, the long-standing precedent of the Sixth Circuit is consistent with the majority of the circuits which have addressed the reliance issue. Thus, decisions of other circuits concerning the "by reason of" provisions of 18 U.S.C. §1964(c) do not warrant this Court's review of the Sixth Circuit's Opinion in this case.

C. Public Policy Supports the Conclusion that Civil RICO Claims Based Upon Mail or Wire Fraud Must Satisfy the Element of Reliance

The public policy implications associated with the outcome advocated by the Petitioners present a significant reason to deny the Petition. The result urged by the Petitioners would transform state law administrative proceedings over workers compensation benefits into federal civil RICO claims. Such a wholesale expansion of RICO would create parallel state and federal proceedings examining the bona fides of a workers compensation claimant's entitlement to benefits. Every employer which chose to dispute an employee's workers compensation claim would be exposed to the possibility that its filing of a notice of dispute with a state workers compensation agency could give rise to a civil RICO claim for mail or wire fraud. This Court has disfavored the expansion of causes of action where such expansion poses the risk that federal power would be used to invite litigation beyond the scope of federal law and into areas already governed by state law guarantees. *Stoneridge Investment Partners, LLC v Scientific-Atlanta, Inc.*, 128 S. Ct. 761, 770-771 (2008). Respondents respectfully submit that the expansion posed by the Petitioners squarely presents such a risk, and thus, the Petition should not be considered by this Court.

CONCLUSION

For the reasons set forth above, the Respondents urge that the Petition for Writ of Certiorari in this matter be denied.

Respectfully submitted,

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App. 1

UNITED STATES DISTRICT COURT

IN THE EASTERN DISTRICT OF MICHIGAN

PAUL BROWN, WILLIAM FANALY, CHARLES THOMAS, GARY RIGGS, ROBERT ORLIKOWSKI, SCOTT WAY,

Plaintiffs,

v

CASSENS TRANSPORT COMPANY and CRAWFORD & COMPANY, foreign corporations, and DR. SAUL MARGULES,

Defendants.

_____/

Case No.: **04-72316**

PAUL D. BORMAN
MAGISTRATE
JUDGE CAPEL

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

Marshall Lasser P25573
MARSHALL LASSER PC
Attorney for plaintiffs
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248-647-7722

_____/

(Filed Jun. 22, 2004)

COMPLAINT AND JURY DEMAND

JURISDICTION AND VENUE

1. Federal question jurisdiction is conferred by plaintiffs' claims under the Federal Racketeer Influence [sic] and Corrupt Organizations Act, 18 USC

§1961 et seq (RICO). Diversity of citizenship jurisdiction is conferred by 28 USC §1332 (plaintiffs are citizens of Michigan, defendants are citizens of other states, and the amounts in controversy exceed $75,000). Pendant jurisdiction of state claims is conferred by 28 USC §1367.

2. Venue is properly laid in the Federal District Court for the Eastern District of Michigan because plaintiffs reside in that district and defendants do business in person and through their agents and representatives in that district, in Wayne and Oakland Counties, Michigan. Dr. Saul Margules does business in Macomb County, MI, and resides within the jurisdiction of this court.

PARTIES

3. Plaintiffs Paul Brown, Robert Orlikowski, Gary Riggs and William Fanaly reside within the jurisdiction of the court. Charles Thomas resides in Pennsylvania. Scott Way resides in Three Rivers MI. All plaintiffs were or are employees of Cassens Transport Company in Wayne and Macomb Counties, Michigan. Cassens Transport and Crawford & Company are corporations domiciled outside Michigan. Cassens Transport is engaged in the business of interstate transportation of new cars, trucks and SUVs. Dr. Saul Margules does business in Macomb County, MI, and resides within the jurisdiction of this court.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

4. Cassens Transport employed each of the plaintiffs. It complied with its obligation, arising under the Michigan Workers Disability Compensation Act, MCL 401.101 et seq (herein "the Act"), to provide its Michigan employees Michigan workers disability compensation insurance, either by signing a contract of insurance with Crawford & Company or by self-insuring. Crawford & Company adjusted workers compensation claims made by Cassens' employees.

5. Decisions regarding paying claims or terminating payment were made jointly by defendants, or were made by Crawford & Company after consulting with Cassens, or were ratified by Cassens after being made by Crawford. These allegations are based on information and belief, and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery. The persons with decision power at Cassens and Crawford formed an "enterprise" for purposes of the Racketeer Influenced and Corrupt Organizations Act (RICO).

6. A. One or more of these persons committed mail fraud, wire fraud and or conspiracy to defraud, in a repeated and continuing pattern, by fraudulently denying benefits. This fraud was accomplished in part by use of the United States mails and by electronic communications in violation of 18 USC 1341 and 1343, by and in violation of MCL 750.280. Some

of these electronic and mail communications did not contain fraudulent misrepresentations, as fraudulent misrepresentations were merely one of the means by which defendants achieved their scheme of fraud. These allegations are based on information and belief, and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

B. This fraud was also accomplished in part by Cassens and Crawford deliberately selecting doctors such as Dr. Saul Margules to get a medical opinion which defendants could use to deny benefits to plaintiffs, rather than to get an objective opinion from a qualified specialist to help defendants decide whether plaintiffs were entitled to benefits. Crawford, Cassens and their attorneys knew Dr. Margules was a family doctor who was not trained or certified in orthopedic medicine, although most of the injuries suffered by Cassens employees were within the field of orthopedic medicine, as they involved bones, joints and muscles. Crawford, Cassens and their attorneys knew Margules and other doctors they employed to examine plaintiffs and other drivers were "cut off" doctors, that is, doctors upon whom Crawford and Cassens could rely for opinions which they could cite as grounds for cutting off or denying benefits, either by stating plaintiffs were able to work, or, if disabled, their injury was not work related. Dr. Margules and these other doctors had over many years received substantial income from defendants and their attorneys. Cassen's and Crawford's past payment of large

sums of money for doing "cut off" reports in workers compensation litigation and the express or implied promise of future payment of money for doing such reports constituted corrupt persuasion, misleading conduct and obstruction of justice within the meaning of 18 USC 1512. Defendants used electronic and mail communications in furtherance of defendants' scheme of fraud, in violation of 18 USC 1341, 1343 and 1512. This fraud was also accomplished by defendants deliberately ignoring communications from objective doctors, trained in orthopedic medicine and other specialities, indicating plaintiffs did have work-related disabilities. These allegations are based on information and belief, and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

C. Plaintiffs' damages were proximately caused by defendants' scheme of fraudulently and dishonestly denying workers compensation benefits. Mail and electronic communications were used by defendants in furtherance of the scheme. Some of these communications contained fraudulent representations to plaintiffs, but others did not. Defendants' use of mail and electronic communications in furtherance of their scheme of fraud violated 18 USC 1341 and 1343, regardless of whether those communications contained fraudulent misrepresentations relied upon by plaintiffs.

D. Some of the acts of mail and wire fraud consisted of communications between defendants, or between defendants and the IME "cut off" doctors

whose reports defendants relied upon in terminating or denying plaintiffs' benefits, which plaintiffs do not have. In these communications, defendants discussed means of cutting off plaintiffs' benefits or forcing them to take settlements at less than true value, even though defendants possessed medical reports from treating doctors and doctors chosen by defendants stating plaintiffs did have work-related disabilities. These allegations are based on information and belief, and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

7. At all times and in all actions plead in this complaint, Crawford & Company was acting as agent for, or in concert with, Cassens Transport.

RICO COMPLAINT OF WILLIAM FANALY AGAINST DEFENDANTS

8. On Dec. 12, 2001, William Fanaly injured his right foot during the course and scope of employment with Cassens, while he was to his Cassens car-hauling truck. He missed work and sustained medical bills and wage loss due to this injury. On Dec. 14, 2001, plaintiff reported the injury to defendants, and requested workers compensation benefits. Plaintiff reported that he was coming out of the motel where he had parked the Cassens truck and stayed overnight (he was on an interstate trip with the company truck, driving from Detroit, MI, to Fenton, MO). He reported that he was walking to the truck to get into

it to drive it to Cassen's terminal when he missed a step and fell, injuring his foot. Crawford's claim adjuster, Tina Litwiller, denied the claim, stating to plaintiff on the telephone in an interstate conversation from St. Louis, MO, to Detroit, MI, that because the injury happened at a motel, it did not happen on the job.

9. On Dec. 19, 2001, Tina Litwiller, a claim adjuster for Crawford & Company in St. Louis, MO, sent to plaintiff in Westland MI, via the US mail, a Notice of Dispute concerning the injury of Dec. 12, 2001, which stated that workers compensation benefits were denied because "injury not work related." This statement and the earlier telephone statement were fraudulent communications in violation of 18 USC sections 1341 and 1343 because the corporate defendants knew that an injury which happens to an employee while he is leaving his motel during the course and scope of employment is an injury which is compensable under the Act.

10. On Feb. 17, 2002, plaintiff dislocated his left shoulder while loading his Cassens car-hauling truck, and he missed work and sustained medical bills and wage loss due to this injury. Plaintiff filed a claim for benefits under the Michigan Workers Disability Compensation Act, MCL 481.101 et seq.

11. Defendants sent plaintiff for examinations to Dr. Saul Margules. Defendants sent plaintiff for examinations to Dr. Saul Margules. Defendants have a long-standing business relationship with

Dr. Margules. For many years, defendants have sent dozens of Cassens workers to him for opinions on whether the workers had job-related disabilities. Dr. Margules is board certified only in family medicine. He works in Macomb County, MI.

12. Defendants expressly or implied communicated to Dr. Margules that it wanted him to write reports stating plaintiff was not disabled due to work-related injuries, regardless of the true circumstances. Defendants' actions violated 18 USC §1341, 1343, and 1512. These communications were by mail and wire and are not in the possession of plaintiff but are in the possession of defendants. This allegation is based in part on information and belief, and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

13. In February or March, 2002, Margules opined to defendants that plaintiff had no job-related disability relating to his shoulder.

14. On Feb. 21, 2002, Tina Litwiller, a claim adjuster for Crawford & Company in St. Louis, MO, sent to plaintiff in Westland MI, via the US mail, a Notice of Dispute concerning the shoulder injury of 2/17/02, which stated that workers compensation benefits were denied because "condition is chronic – per Dr. Marglious [sic]."

15. This fraudulent statement via the mail violated 18 USC section 1341.

16. Defendants' statements were fraudulent because the chronicity of a condition is not a legal basis for denial of benefits, and because defendants had proof that plaintiff injured his shoulder during the course and scope of employment. Also, the corporate defendants knew or should have known Dr. Margules' opinion was an unreliable basis for denial of benefits, because Dr. Margules was not an expert in orthopedic conditions, because Dr. Margules was biased due to the amount of money defendants paid him over the years to examine Cassens workers and to testify against them in workers compensation cases, and because plaintiff's treating surgeons opined, based on what they saw in exams and during surgery, that plaintiff's pathology was work-related.

16A If, in fact, Margules opined to the other defendants that plaintiff had no job-related disability. Margules' actions violated 18 USC §1512. This communication was by mail and wire and are not in the possession of plaintiff but are in the possession of defendants. This allegation is based in part on information and belief, and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

17. Plaintiff relied on the fraudulent communications to the extent he suffered the financial loss of having to pay attorney fees, medical care and medical mileage. Defendants' fraud directly caused injury to plaintiff because it deprived him of workers compensation benefits and because it caused him the expense

of paying attorney fees, medical care and mileage to and from medical care.

18. At all times and in all actions plead in this complaint, Crawford & Company was acting as agent for, or in concert with, Cassens Transport. Decisions regarding paying claims or terminating payment were made jointly by defendants, or were made by Crawford after consulting with Cassens, or were ratified by Cassens after being made by Liberty. These allegations are based on information and belief, and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

19. This cause of action arises under 18 USC 1961, 1962, 1964 and 1965. The allegations made herein are based on the facts alleged herein, on information and belief, and are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery. With regard to allegations concerning the enterprise, pattern of conduct, predicate acts and other offenses, William Fanaly incorporates herein the pleadings of the other plaintiffs, and relies also on statements made and actions taken by defendants with regard to the claims of James Lambrich, Mark West, David Slayton and other Cassens employees.

20. Cassen's and Crawford's workers compensation officials formed an "enterprise" within the meaning of the RICO Act, which engaged in a pattern of racketeering aimed at fraudulently denying workers

compensation benefits to the plaintiffs in this suit, and to other employees of Cassens. Alternatively, the enterprise consisted of defendant's workers compensation officials plus Dr. Margules. These allegations are based on information and belief, and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

21. Defendants used the Postal Service and the wires for interstate communications in effectuation of their scheme, demonstrating and involving a threat of continuing racketeering activity against employees of UPS who are entitled to Michigan workers compensation benefits..

WHEREFORE William Fanaly demands judgment against defendants for damages measured by the amount of benefits improperly withheld from him, plus interest as provided by law, all tripled in accordance with RICO, together with attorney fees and costs as provided by law.

RICO COMPLAINT OF CHARLES THOMAS AGAINST CRAWFORD & COMPANY AND CASSENS TRANSPORT

22. Plaintiff Charles Thomas was working within the course and scope of his employment with Cassens Transport on April 16, 2001, when he pulled on a tie-down bar and tore the rotator cuff in his right shoulder. He made a workers compensation claim with Crawford & Company and Cassens (the corporate defendants). On or about Jan. 10, 2002, he gave

to Bill Molter, a terminal manger for Cassens, a claim form which contained in "Section 2 – Attending Physician's Statement" information that the rotator cuff tear arose out of plaintiff's employment, and that the injury occurred when "he attempted to pull a metal bar from above his head to waist level. It did not pull down easily and he had abrupt pain in his right shoulder." This Attending Physicians Statement was signed on Dec. 13, 2001, by Dr. Bailey of Meadville, PA.

23. Despite having possession of this Attending Physician's Statement, Tina Litwiller of Crawford and Company, in St. Louis, MO, mailed via the US Postal Service, on or about 1/21/02, a Notice of Dispute to plaintiff denying workers compensation benefits and stating "no medical establishing causation."

24. Litwiller's statement was fraudulent and in violation of 18 USC §1341 because she possessed a medical statement establishing causation. Defendants also committed mail fraud in that their pleadings in the workers compensation case fraudulently denied that plaintiff suffered a work-related injury when they had knowledge that plaintiff had suffered a work-related injury.

25. Defendants' fraud directly caused injury to plaintiff because it deprived him of workers compensation benefits and because it caused him the expense of paying attorney fees, medical care and mileage to and from medical care. Plaintiff relied on

the communication to the extent he suffered the financial loss of having to pay attorney fees, medical care and medical mileage.

26. At all times and in all actions plead in this complaint, Crawford & Co was acting as agent for, or in concert with, Cassens Transport. Decisions regarding paying claims or terminating payment were made jointly by Cassens and Crawford, or were made by Crawford after consulting with Cassens, or were ratified by Cassens after being made by Crawford. These allegations are based on information and belief, and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

27. This cause of action arises under 18 USC 1961, 1962, 1964 and 1965. The allegations made herein are based on the facts alleged herein, on information and belief, and are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery. With regard to allegations concerning the enterprise, pattern of conduct, predicate acts and other offenses, Charles Thomas incorporates herein the pleadings of the other plaintiffs, and relies also on statements made and actions taken by defendants with regard to the claims of James Lambrich, Mark West, David Slayton and other Cassens employees.

28. The corporate defendants' workers compensation officials formed an "enterprise" within the meaning of the RICO Act, which engaged in a pattern

of racketeering aimed at fraudulently denying workers compensation benefits to the UPS employees in this suit, fraudulently terminating those benefits, and extorting plaintiff to settle his workers compensation claim.

29. Defendants used the Postal Service and the wires for interstate communications in effectuation of their scheme, demonstrating and involving a threat of continuing racketeering activity against employees of UPS who are entitled to Michigan workers compensation benefits..

WHEREFORE Charles Thomas demands judgment against Crawford & Company and Cassens Transport for damages measured by the amount of benefits improperly withheld from him, plus interest as provided by law, all tripled in accordance with RICO, together with attorney fees and costs as provided by law.

RICO COMPLAINT OF PAUL BROWN AGAINST DEFENDANTS

30 On April 12, 2000, Paul Brown injured his left knee when he twisted his left leg climbing down off Cassen's car hauler, in the course and scope of employment. The injury to the knee was aggravated by work done through May 3, 2000. On Feb. 15, 2002, plaintiff injured his shoulders pulling on a tie-down bar with great force, and later that day he injured his right knee. He continued working until March 4,

2002, and continued work aggravated those conditions.

31 Plaintiff filed a claim for benefits under the Michigan Workers Disability Compensation Act, MCL 481.101 et seq.

32. Defendants sent plaintiff for examinations to Dr. Saul Margules. Defendants have a long-standing business relationship with Dr. Margules. For many years, defendants have sent dozens of Cassens workers to him for opinions on whether the workers had job-related disabilities. Dr. Margules is board certified only in family medicine. He works in Macomb County, MI. Defendants expressly or implied communicated to Dr. Margules that it wanted him to write reports stating plaintiff was not disabled due to work-related injuries, regardless of the true circumstances. Defendants' actions violated 18 USC §1341, 1343, and 1512. These communications were by mail and wire and are not in the possession of plaintiff but are in the possession of defendants. This allegation is based in part on information and belief, and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

33. Plaintiff's treating orthopedic surgeons, Drs. Mark Pinto and Billy Joe Page, both board-certified in orthopedic surgery, operated on plaintiff's knees and shoulders. They wrote reports and gave depositions, based on their clinical exams and observations during surgery, stating that plaintiff had job-related disabilities due to pathology in his knees and

shoulders. These reports and depositions were received by defendants, and provided a sufficient basis for payment of plaintiff's workers compensation claim.

34. Margules opined to the other defendants that plaintiff had no job-related disability. This communications was by mail and wire and are not in the possession of plaintiff but are in the possession of defendants. This allegation is based in part on information and belief, and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

34A. Margules opined to the other defendants that plaintiff had no job-related disability. Margules' actions violated 18 USC §1512. This communication was by mail and wire and are not in the possession of plaintiff but are in the possession of defendants. This allegation is based in part on information and belief, and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

35. On March 19, 2002, Tina Litwiller, a claim adjuster for Crawford & Company in St. Louis, MO, sent to Paul Brown in Pinckney MI, via the US mail, a Notice of Dispute (a form provided by the Michigan Department of Labor, Bureau of Workers Disability Compensation). The Notice of Dispute stated that workers compensation benefits were denied because "medical condition not work related." This fraudulent statement via the mail violated 18 USC section 1341.

36. Ms. Litwiller relied on the opinion of Dr. Margules to deny benefits. Cassens joined in her decision or ratified it.

37. The statement "medical condition not work related" was fraudulent. Defendants knew or should have known this statement was false, or Crawford & Company and Cassens knew or should have known that Dr. Margules' opinion was an unreliable basis for denial of benefits, because Dr. Margules was not an expert in orthopedic conditions, because Dr. Margules was biased due to the amount of money defendants paid him over the years to examine Cassens workers and to testify against them in workers compensation cases, and because plaintiff's treating surgeons had opined, based on what they saw in exams and during surgery, that plaintiff's pathology was work-related.

38. Defendants' fraud directly caused injury to plaintiff because it deprived him of workers compensation benefits and because it caused him the expense of paying attorney fees, medical care and mileage to and from medical care. Paul Brown relied on defendants' fraudulent statement and suffered the expense of having to pay attorney fees, medical bills and medical mileage, as well as loss of workers compensation wage loss benefits.

39. After defendants denied plaintiff's workers compensation claim, the case proceeded to a hearing. The only medical evidence submitted by defendant was the deposition of Dr. Margules. On March 20, 2003, the magistrate awarded benefits to plaintiff.

The order awarding benefits was mailed to all parties by the Michigan Bureau of Workers Disability Compensation/Board of Magistrates. Defendants appealed the decision to the Michigan Workers Compensation Appellate Commission (WCAC) and began paying 70% weekly benefits, which they were obligated to pay during appeal under the Act..

40. After March 20, 2003, Paul Brown and his health care providers submitted medical bills which arose during appeal and which were related to the conditions for which benefits were awarded. Under MCL 418.862(2), defendants were obligated during appeal to pay these bills.

41. Tina Litwiller, told Janice Manning, on Nov. 5, 2003, Jodie Heselschwerdt on October 13, 2003, and Leatha LaForge on or about Nov. 1, 2003, via interstate telephone communications between St. Louis, MO, and Pinckney or Chelsea, MI, that she did not have to pay any medical bills during appeal. Manning, LaForge and Heselschwerdt are billing clerks for doctors, hospitals or pharmacies who provided medical care to plaintiff during appeal. Also, Litwiller told plaintiff in an interstate phone conversation between St. Louis, MO, and Pinckneya [sic], MI, in April 2003, that she did not have to pay medical bills arising during appeal. Litwiller's statements were false and fraudulent because defendants knew they were obligated by law to pay medical bills arising during appeal.

41A. During the corporate defendants' appeal to the WCAC of plaintiff's award of benefits, plaintiff filed a motion to dismiss defendants' appeal on the ground that defendants failed to pay medical bills arising during appeal. Defendants opposed the motion, submitting various documents to the WCAC. On March 29, 2004, defendants submitted to plaintiff's counsel in Southfield, MI, and to the WCAC in Lansing, MI, via wire (facsimile) and the US mail, an affidavit of Kathy Connor, who identified herself as an adjuster at Crawford & Company in Missouri. Her affidavit stated inter alia, "We had been under the misimpression that only the 70% weekly benefits need be paid during the appeal in Michigan, but that misinterpretation has been corrected and all the past due medical expenses are now paid." On April 7, 2004, defendants submitted to plaintiff's counsel in Southfield, MI, and to the WCAC in Lansing, MI, via wire (facsimile) and the US mail, an affidavit of Tina Litwiller, who identified herself as an adjuster at Crawford & Company in Missouri. Her affidavit stated inter alia, "I had been under the misimpression that only the 70% weekly benefits need be paid during the appeal in Michigan, but that misinterpretation has been corrected and all the past due medical expenses are now paid." These statements were fraudulent because defendants and the affiants knew they were obligated by Michigan's worker's disability compensation act (the Act) to pay medical bills arising during appeal. These fraudulent statement via the mail and or wire violated 18 USC section 1341 and 1343.

42. Plaintiff relied on the fraudulent communications to the extent he suffered the financial loss of having to pay attorney fees, medical bills and medical mileage. Defendants' fraud directly caused injury to plaintiff because it deprived him of workers compensation benefits and because it caused him the expense of paying attorney fees, medical bills and mileage to and from medical care.

43. At all times and in all actions plead in this complaint, Crawford & Company was acting as agent for, or in concert with, Cassens Transport. Decisions regarding paying claims or terminating payment were made jointly by defendants, or were made by Crawford after consulting with Cassens, or were ratified by Cassens after being made by Crawford. These allegations are based on information and belief, and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

44. This cause of action arises under 18 USC 1961, 1962, 1964 and 1965. The allegations made herein are based on the facts alleged herein, on information and belief, and are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery. With regard to allegations concerning the enterprise, pattern of conduct, predicate acts and other offenses, Paul Brown incorporates herein the pleadings of the other plaintiffs, and relies also on statements made and actions taken by defendants with regard to the claims

of James Lambrich, Mark West, David Slayton and other Cassens employees.

45. Defendants' workers compensation officials formed an "enterprise" within the meaning of the RICO Act, which engaged in a pattern of racketeering aimed at fraudulently denying workers compensation benefits to the plaintiffs in this suit, and to other employees of Cassens. Alternatively, the enterprise consisted of defendant's workers compensation officials plus Dr. Margules. These allegations are based on information and belief, and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

46. Defendants used the Postal Service and the wires for interstate communications in effectuation of their scheme, demonstrating and involving a threat of continuing racketeering activity against employees of UPS who are entitled to Michigan workers compensation benefits..

WHEREFORE Paul Brown demands judgment against defendants for damages measured by the amount of benefits improperly withheld from him, plus interest as provided by law, all tripled in accordance with RICO, together with attorney fees and costs as provided by law.

RICO COMPLAINT OF GARY RIGGS AGAINST CASSENS TRANSPORT AND CRAWFORD & COMPANY

47. Gary Riggs worked for Cassens as a car hauler. In 2001, he was diagnosed as having a benign tumor. As a result of symptoms caused by the tumor, Dr. Martin Kornblum gave him a prescription for a handicap parking sticker. Plaintiff had surgery for the tumor in 2001 and returned to work without restriction in 2001 or 2002. On Feb., 23, 2003, long after plaintiff returned to work, he slipped and fell within the course and scope of employment for Cassens. Another injury occurred at work on April 8, 2003. As a result of these two injuries, plaintiff Gary Riggs has been unable to work. In July, 2003, his workers compensation attorney, John Charters, sent to Cassens and Crawford medical records concerning the tumor problem, including information concerning the prescription for a handicap sticker, which preceded the fall at work. Plaintiff was entitled to benefits under the Michigan Workers Disability Compensation Act, Cassens and Crawford began voluntarily paying workers compensation benefits.

48. On February 18, 2004, Tina Litwiller, claim adjuster for Crawford in St. Louis, MO, mailed via the US mail to plaintiff, in Marlette, MI, a Notice of Dispute, informing plaintiff that his workers compensation benefits were terminated.. This notice contained the statement, "waiting on handicap information, physician medical report in regards to disability." This statement was fraudulent, because

Cassens and Crawford had been given by John Charters, in 2003, the information and reports. These fraudulent statement via the mail and or wire violated 18 USC section 1341 and 1343.

49. In March and April, 2004, Richard Lovernick, attorney for Cassens and Crawford, told John Charters that his clients had no legitimate basis to terminate plaintiff's benefits.

50. Plaintiff relied on the fraudulent communication to the extent he suffered the financial loss of having to pay attorney fees, medical bills and medical mileage. Defendants' fraud directly caused injury to plaintiff because it deprived him of workers compensation benefits and because it caused him the expense of paying attorney fees, medical bills and mileage to and from medical care.

51. At all times and in all actions plead in this complaint, Crawford & Company was acting as agent for, or in concert with, Cassens Transport. Decisions regarding paying claims or terminating payment were made jointly by defendants, or were made by Crawford after consulting with Cassens, or were ratified by Cassens after being made by Crawford. These allegations are based on information and belief, and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

52. This cause of action arises under 18 USC 1961, 1962, 1964 and 1965. The allegations made herein are based on the facts alleged herein, on

information and belief, and are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery. With regard to allegations concerning the enterprise, pattern of conduct, predicate acts and other offenses, Paul Brown incorporates herein the pleadings of the other plaintiffs, and relies also on statements made and actions taken by defendants with regard to the claims of James Lambrich, Mark West, David Slayton and other Cassens employees.

53. Defendants' workers compensation officials formed an "enterprise" within the meaning of the RICO Act, which engaged in a pattern of racketeering aimed at fraudulently denying workers compensation benefits to the plaintiffs in this suit, and to other employees of Cassens. Alternatively, the enterprise consisted of defendant's workers compensation officials plus Dr. Margules. These allegations are based on information and belief, and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

54. Defendants used the Postal Service and the wires for interstate communications in effectuation of their scheme, demonstrating and involving a threat of continuing racketeering activity against employees of UPS who are entitled to Michigan workers compensation benefits..

WHEREFORE Gary Riggs demands judgment against defendants Cassens Transport and Crawford & Company for damages measured by the amount of

benefits improperly withheld from him, plus interest as provided by law, all tripled in accordance with RICO, together with attorney fees and costs as provided by law.

RICO COMPLAINT OF ROBERT ORLIKOWSKI AGAINST DEFENDANTS

55. On or about November 6, 2000, Robert Orlikowski injured his left knee while employed as a car hauler by Cassens. The injury was caused by trauma suffered that day and or by aggravation, caused by years of car-hauling work for Cassens, of degenerative arthritis arising from a 1980 injury to the left knee which did not occur while working for Cassens. Plaintiff was disabled by the injury and required surgery. Under the Michigan Workers Disability Compensation Act, plaintiff was entitled to medical care and wage loss benefits injury caused by trauma at work and or by aggravation, caused by years of car-hauling work for Cassens, of degenerative arthritis arising from a 1980 injury to the left knee which did not occur while working for Cassens.

56. Plaintiff reported the injury and was sent for examination to Dr. Saul Margules. Dr. Margules examined plaintiff and immediately called Tina Litwiller; plaintiff overheard Dr. Margules talking on the phone to Litwiller. After ending his conversation with Litwiller, Dr. Margules told plaintiff he could return to work without restriction., although plaintiff's knee was in pain and was swollen, and

Dr. Margules knew plaintiff's job as a car hauler required repetitive climbing of ramps and ladders, repetitive squatting and kneeling, strenuous lifting, pushing and pulling, and walking on narrow ramps nine feet above ground. Dr. Margules did not order an MRI. His initial diagnosis was "acute knee strain," a diagnosis of injury which would entitle plaintiff to benefits under the Act. Two days later, on November 8, 2000, Dr. Margules made the diagnosis, "Severe abnormality of L. knee, not particularly work related.," and again released plaintiff for work without restriction.

57. On or later than November 8, 2000, Dr. Margules reported to Cassens and Crawford:

> In Conclusion:
>
> On the basis of Mr. Orlikowski's prior surgery and degenerative changes noted in the knee, I can only conclude that he has severe arthritis with degenerative changes that are many years old. He sustained trauma to the left knee and required surgery several years ago. His present injury that of twisting his knee could not have caused the changes that are shown on the MRI. All other findings are of many years longstanding.
>
> Twisting the knee would give pain in a severely arthritic knee, but not the rest of the findiings [sic].

This statement was fraudulent in that it did not mention the acute strain to the knee and did not

mention the possibility that the damage to the knee may be partly work related. It was further fraudulent in stating "his present injury that of twisting his knee could not have caused the changes that are shown on the MRI," when one or more of the meniscal tears shown on the MRI could have been caused by a twisting of the knee, according to objective and unbiased orthopedic expert opinion. These fraudulent statements via the mail and or wire violated 18 USC section 1341 and 1343.

58. On November 21, 2000, Tina Litwiller, claim adjuster for Crawford in St. Louis, MO, mailed via the US mail to plaintiff, in Marlette, MI, a Notice of Dispute, informing plaintiff that his workers compensation benefits were denied on the grounds "injury not work related" "based on opinion of authorized physician." This statement was fraudulent for reasons stated in paragraph 6, and because Litwiller, Cassens and Crawford knew plaintiff would be entitled to benefits if he had suffered an "acute knee strain" at work, or if plaintiff had a "severe abnormality" which was to some degree work related even if "not particularly work related," or if plaintiff's years of work for Cassens had contributed to arthritis arising from the 1980 non-work-related injury (a possibility not discussed in Dr. Margules' written report). Litwiller could have denied benefits on the ground "further investigation required," but instead made the affirmative statement "injury not work related." These fraudulent statements via the mail and or wire violated 18 USC section 1341 and 1343.

59. On or about November 20, 2000, plaintiff began treating with a board-certified orthopedic surgeon, Dr. Lawrence Ulrey who found plaintiff had a large amount of fluid in the left knee and very limited movement of the joint. He diagnosed knee pain exacerbated by recent injury and osteoarthritis. He opined that when plaintiff twisted his knee, "either he exacerbated his pre-existing osteoarthriic [sic] condition or possibly had torn a cartilage or done something in the joint to stimulate all this fluid." Dr. Ulrey did arthroscopic surgery and found a medial meniscal tear and severe arthritis. He opined that the medical meniscal tear was "probably a new injury" and again opined that the arthritis had been aggravated or exacerbated by the incident at work. He also stated heavy manual labor of the type plaintiff did would cause arthritis to progress at a more rapid rate. This testimony clearly

60. Dr. Ulrey gave a deposition on June 20, 2002, in which he gave the opinions noted above. Despite having this information, Crawford and Cassens continued in their scheme to deny benefits.

61. Plaintiff relied on defendant's fraudulent communication to the extent he suffered the financial loss of having to pay attorney fees, medical bills and medical mileage. Defendants' fraud directly caused injury to plaintiff because it deprived him of workers compensation benefits and because it caused him the expense of paying attorney fees, medical bills and mileage to and from medical care.

62. At all times and in all actions plead in this complaint, Crawford & Company was acting as agent for, or in concert with, Cassens Transport. Decisions regarding paying claims or terminating payment were made jointly by defendants, or were made by Crawford after consulting with Cassens, or were ratified by Cassens after being made by Crawford. These allegations are based on information and belief, and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

63. This cause of action arises under 18 USC 1961, 1962, 1964 and 1965. The allegations made herein are based on the facts alleged herein, on information and belief, and are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery. With regard to allegations concerning the enterprise, pattern of conduct, predicate acts and other offenses, Paul Brown incorporates herein the pleadings of the other plaintiffs, and relies also on statements made and actions taken by defendants with regard to the claims of James Lambrich, Mark West, David Slayton and other Cassens employees.

64. Defendants' workers compensation officials formed an "enterprise" within the meaning of the RICO Act, which engaged in a pattern of racketeering aimed at fraudulently denying workers compensation benefits to the plaintiffs in this suit, and to other employees of Cassens. Alternatively, the enterprise consisted of defendant's workers compensation

officials plus Dr. Margules. These allegations are based on information and belief, and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

65. Defendants used the Postal Service and the wires for interstate communications in effectuation of their scheme, demonstrating and involving a threat of continuing racketeering activity against employees of UPS who are entitled to Michigan workers compensation benefits..

WHEREFORE plaintiff demands judgment against defendants for damages measured by the amount of benefits improperly withheld from him, plus interest as provided by law, all tripled in accordance with RICO, together with attorney fees and costs as provided by law.

RICO COMPLAINT OF SCOTT WAY AGAINST DEFENDANTS

66. On or about March 12, 2002, Scott Way hurt his low back at work when he fell off a truck and thereafter had stiffness in his low back and worked slower than usual because of this stiffness. Plaintiff received no treatment for this injury. On June 10, 2002, he was working slower than usual because of stiffness in the low back.

67. On June 10, 2002, plaintiff was standing on the ground, leaning his left hand on the hood of a car which was on the car hauler, standing on tip toes to

reach a ratchet over his head with his right arm fully outstretched while twisting and bending at the waist, when he had a sudden sharp pain in his low back. His low back stiffness increased substantially between that event and the next morning. Plaintiff was able to complete his work that day and the next day, with assistance from fellow workers. Low back pain increased the next day, as a result of which he stopped working on June 11, 2002, and reported the injury to Cassens.

68. On June 12, 2002, plaintiff was sent by Cassens to Dr. Margules. Plaintiff did not complain of any radiating pain or other problems in the left leg, only of low back pain and stiffness. Dr. Margules, at 31200 Dequindre, Warren MI, examined plaintiff and mailed a report to Tina Litwiller, Crawford Insurance, po box 411280, St. Louis MO 63141, on June 19, 2002. The report's Comment and Conclusion sections concentrated only on MRI findings and concluded plaintiff's L4-5 disc herniation was not related to the incident of June 10, 2002. This report was fraudulent insofar as it was intended to serve as a basis for denial of plaintiff's workers compensation claim because (a) Dr. Margules knew plaintiffs low back pain may have been caused by a work-related injury other than an L4-5 disc herniation, and this injury would qualify plaintiff for workesr [sic] compensation, and (b) Dr. Margules knew the L4-5 herniation may have been aggravated by the workp incident even if not caused by that incident, and if it was aggravated, then plaintiff could qualify for workers compensation.

The report was also fraudulent because Dr. Margules did not intend to examine plaintiff objectively but was biased and favored Cassens and Crawford because of the amount of money defendants paid him.

69. Tina Litwiller, in St. Louis, MO, mailed to plaintiff in Three Rivers, MI, a Notice of Dispute on or about July 29, 2002, stating, "Based on Dr. Margules' 6/19/02 report and opinion, compensation is not being paid." This Notice of Dispute was fraudulent because (a) Litwiller knew plaintiff's low back pain may have been caused by a work-related injury other than an L4-5 disc herniation, and this injury would qualify plaintiff for workesr [sic] compensation, and (b) she knew the L4-5 herniation may have been aggravated by the work incident even if not caused by that incident, and if it was aggravated, then plaintiff could qualify for workers compensation. The report was also fraudulent because she knew Dr. Margules did not intend to examine plaintiff objectively but was biased and favored Cassens and Crawford because of the amount of money defendants paid him.

70. Plaintiff relied on defendant's fraudulent communication to the extent he suffered the financial loss of having to pay attorney fees, medical bills and medical mileage. Defendants' fraud directly caused injury to plaintiff because it deprived him of workers compensation benefits and because it caused him the expense of paying attorney fees, medical bills and mileage to and from medical care.

71. At all times and in all actions plead in this complaint, Crawford & Company was acting as agent for, or in concert with, Cassens Transport. Decisions regarding paying claims or terminating payment were made jointly by defendants, or were made by Crawford after consulting with Cassens, or were ratified by Cassens after being made by Crawford. These allegations are based on information and belief, and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

72. This cause of action arises under 18 USC 1961, 1962, 1964 and 1965. The allegations made herein are based on the facts alleged herein, on information and belief, and are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery. With regard to allegations concerning the enterprise, pattern of conduct, predicate acts and other offenses, Paul Brown incorporates herein the pleadings of the other plaintiffs, and relies also on statements made and actions taken by defendants with regard to the claims of James Lambrich, Mark West, David Slayton and other Cassens employees.

73. Defendants' workers compensation officials formed an "enterprise" within the meaning of the RICO Act, which engaged in a pattern of racketeering aimed at fraudulently denying workers compensation benefits to the plaintiffs in this suit, and to other employees of Cassens. Alternatively, the enterprise consisted of defendant's workers compensation

officials plus Dr. Margules. These allegations are based on information and belief, and are likely to have evidentiary support after a reasonable opportunity for investigation and discovery.

74. Defendants used the Postal Service and the wires for interstate communications in effectuation of their scheme, demonstrating and involving a threat of continuing racketeering activity against employees of UPS who are entitled to Michigan workers compensation benefits..

WHEREFORE plaintiff demands judgment against defendants for damages measured by the amount of benefits improperly withheld from him, plus interest as provided by law, all tripled in accordance with RICO, together with attorney fees and costs as provided by law.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CLAIMS OF ALL PLAINTIFFS AGAINST CASSENS TRANSPORT AND CRAWFORD & COMPANY

75. Cassens Transport and Crawford & Company engaged in a "continuous pattern of harassment, abuse and unethical conduct," as that phrase was used in *Hailes v Liberty Mutual Ins Co,* no 215509, 1999 WL 33326762 (Mich App Dec. 28, 1999), and also fraudulent conduct, intentionally inflicting emotional distress on plaintiffs and on other Cassens employees (eg, Mark West, David Slayton, James

Lambrich). This conduct includes the acts alleged by each plaintiff in their complaints, above.

76. Plaintiffs incorporate all prior paragraphs of this complaint.

77. Defendants' conduct proximately caused injury to plaintiffs, causing them emotional distress, for which each plaintiff is entitled to damages exceeding $100,000.

WHEREFORE plaintiffs each demand damages from defendants in an amount exceeding $100,000.

JURY DEMAND

Plaintiffs demand a jury trial.

/s/ M. Lasser
Marshall Lasser PC, by
Marshall Lasser P25573
po box 2579, Southfield MI 48307 (248) 647 7722
Date: June 21, 2004
F:\wp51\DOCS\cassens\Complaint

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN

PAUL BROWN, WILLIAM FANALY, CHARLES THOMAS GARY RIGGS, ROBERT ORLIKOWSKI, SCOTT WAY,

Plaintiffs,

v

CASSENS TRANSPORT COMPANY and CRAWFORD & COMPANY, foreign corporations, and DR. SAUL MARGULES,

Defendants.

Case No.: 04-CV 72316
Hon. Paul D. Borman

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NOTICE OF APPEAL

Notice is hereby given that PAUL BROWN, WILLIAM FANALY, CHARLES THOMAS, GARY RIGGS, ROBERT ORLIKOWSKI and SCOTT WAY, hereby appeal to the United States Court of Appeals for the Sixth Circuit from The Opinion and Order Granting Defendant's Motion to Dismiss Plaintiff's Complaint Under Rule 12(b)(6) entered on July 15, 2005.

/s/ Marshall Lasser
Marshall Lasser P25573
MARSHALL LASSER PC
Attorney for plaintiffs
P.O. Box 2579
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248-647-7722

Dated: July 28, 2005

MCL 418.801. Payment of compensation, recipient, time, records, reports; penalty payment

Sec. 801. (1) Compensation shall be paid promptly and directly to the person entitled thereto and shall become due and payable on the fourteenth day after the employer has notice or knowledge of the disability or death, on which date all compensation then accrued shall be paid. Thereafter compensation shall be paid in weekly installments. Every carrier shall keep a record of all payments made under this act and of the time and manner of making the payments and shall furnish reports, based upon these records, to the bureau as the director may reasonably require.

(2) If weekly compensation benefits or accrued weekly benefits are not paid within 30 days after becoming due and payable, in cases where there is not an ongoing dispute, $50.00 per day shall be added and paid to the worker for each day over 30 days in which the benefits are not paid. Not more than $1,500.00 in total may be added pursuant to this subsection.

(3) If medical bills or travel allowance are not paid within 30 days after the carrier has received notice of nonpayment by certified mail, in cases where there is no ongoing dispute, $50.00 or the amount of the bill due, whichever is less, shall be added and paid to the worker for each day over 30 days in which the medical bills or travel allowance are not paid. Not more than $1,500.00 in total may be added pursuant to this subsection.

(4) For purposes of rate-making, daily charges paid under subsection (2) shall not constitute elements of loss.

(5) An employer who has notice or knowledge of the disability or death and fails to give notice to the carrier shall pay the penalty provided for in subsection (2) for the period during which the employer failed to notify the carrier.

(6) When weekly compensation is paid pursuant to an award of a worker's compensation magistrate, an arbitrator, the board, the appellate commission, or a court, interest on the compensation shall be paid at the rate of 10% per annum from the date each payment was due, until paid.

MCL 418.861b. Vexatious claims

Sec. 861b. The commission, upon its own motion, or the motion of any party, may dismiss a claim for review, assess costs, or take other disciplinary action when it has been determined that the claim or any of the proceedings with regard to the claim was vexatious by reason of either of the following:

(a) That the claim was taken for purposes of hindrance or delay or without any reasonable basis for belief that there was meritorious issue to be determined on appeal.

(b) That any pleading, motion, argument, petition, brief, document, or appendix filed in the cause or any

testimony presented in the cause was grossly lacking in the requirements of propriety or grossly disregarded the requirements of a fair presentation of the issues.

MCL 418.862. Payment of weekly or medical benefits during pendency of appeal; payment or reimbursement upon final determination; interest; attorneys' fees

Sec. 862. (1) A claim for review filed pursuant to section 859, 859a, 860, 861, or 864(11) shall not operate as a stay of payment to the claimant of 70% of the weekly benefit required by the terms of the award of the worker's compensation magistrate or arbitrator . Payment shall commence as of the date of the worker's compensation magistrate's or arbitrator's award, and shall continue until final determination of the appeal or for a shorter period if specified in the award. Benefits accruing prior to the award shall be withheld until final determination of the appeal. If the weekly benefit is reduced or rescinded by a final determination, the carrier shall be entitled to reimbursement in a sum equal to the compensation paid pending the appeal in excess of the amount finally determined. Reimbursement shall be paid upon audit and proper voucher from the second injury fund established in chapter 5. If the award is affirmed by a final determination, the carrier shall pay all compensation which has become due under the provisions of the award, less any compensation already paid.

Interest shall not be paid on amounts paid pending final determination. Payments made to the claimant during the appeal period shall be considered as accrued compensation for purposes of determining attorneys' fees under the rules of the bureau.

(2) A claim for review filed pursuant to section 859a or 864(11) of a case for which an application under section 847 is filed after March 31, 1986 shall not operate as a stay of providing medical benefits required by the terms of the award. Medical benefits shall be provided as of the date of the award and shall continue until final determination of the appeal or for a shorter period if specified in the award. Benefits accruing prior to the award shall be withheld until final determination of the appeal. If the benefit amount is reduced or rescinded by a final determination, the carrier shall be reimbursed for the amount of the expenses incurred in providing the medical benefits pending the appeal in excess of the amount finally determined. Reimbursement shall be paid upon audit and proper voucher from the general fund of the state. If the award is affirmed by a final determination, the carrier shall provide all medical benefits which have become due under the provisions of the award, less any benefits already provided for. Interest shall not be paid on amounts paid pending final determination.